

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA
FOR THE JUNE 19, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, UniFirst Corporation, Ameridose LLC, New England Compounding Pharmacy, Inc. (through both the Trustee and counsel), and the Official Committee of Unsecured Creditors (through counsel) jointly propose the following agenda for the June 19, 2014 status conference:¹

A. Report to the Court.

1. Status of settlement with NECC, insiders, related entities, and insurers
 - a. Deadline to object to Trustee's motion for approval of settlements set for July 8, 2014, at 4:30 PM EDT
 - b. Hearing on Trustee's motion for approval of settlements set for July 14 at 2:00 PM before Judge Boroff [Bankruptcy Dkt. 1176]
2. Status of mediation efforts [Mediation Order, Dkt. No. 394]
 - a. ARL
 - b. Liberty (Liberty's Notice of Withdrawal from Mediation [Dkt. 1196])
 - c. Victory
 - d. Inspira
 - e. Florida clinics
3. Status of insurance declaratory actions:
 - a. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS; *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS

¹ All defendants whose counsel have filed notices of appearance in the MDL were provided an opportunity to comment on the proposed agenda.

- i. Hearing on motions to intervene set for June 24 at 2:30 PM before Judge Saylor
 - b. *Landmark Am. Ins. Co. v. ARL Bio Pharma, Inc.*, CJ-2013-3193 (Okla. Dist. Ct.)
 - c. *Star Ins. Co. v. Michigan Pain Specialists PLLC, et al.*, 14-243 CB Brown (Ann Arbor)
- 4. Status of discovery
 - a. Documents NECC produced to PSC informally are now available in the document repository to those parties who have requested and paid for access or are otherwise in the process of being produced to requesting defendants
 - b. Status of Deposition Protocol Order [Dkt. 996, 998, 1009, 1054] (referred to Judge Boal [Dkt. 1080] and fully argued at April 10, 2014 hearing [Dkt. 1081])
 - c. Tennessee discovery issues (referred to Judge Boal [Dkt. 1127])
 - d. Trustee's Notice Regarding Further Relief from Preservation Order [Dkt. 1174]
- 5. Status of litigation track
 - a. *King v. New England Compounding Pharmacy Inc. et al*, 14-CV-10434-RWZ
 - i. Motion to Withdraw as Counsel for Norma King [King Dkt. 14]
 - 1. Motion for Leave to Appear via Telephone [Dkt. 1101]
 - 2. Opposition by Attorney Barbara Buell [King Dkt. 15]
 - ii. Hannehman University Hospital Motion for Summary Judgment [King Dkt. 16]
 - 1. King Response [King Dkt. 21-22]
 - b. Scheduling argument on motions to dismiss that will be ripe by the August status conference
 - i. Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 774, 775, 776, 777, 778]
 - ii. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
 - iii. BKC Motion to Dismiss [Dkt. 896, 897]
 - iv. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]
 - v. Dr. Nitesh Bhagat's Motions to Dismiss for Failure to Serve a Proper Affidavit of Merit
 - 1. *Ramos* [MDL Dkt. 1039]

- 2. *Pennington* [13-cv-10406-RWZ, Dkt. 59]
- 3. *Rivera* [MDL Dkt. 1194]
- vi. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]
- vii. Dallas Back Pain Management/Momentum Pain Management and Abbeselom Ghermany's Motion to Dismiss [Dkt. 1133]
- 6. Status of appeals
- 7. Schedule for future status conferences
 - a. Rescheduling August 14, 2014 status conference

B. Fully-briefed motions.

- 8. Motions to be decided on the papers (no oral argument request)
 - a. PSC's Motion for Entry of CMO Establishing Assessment Procedures to Fund Common Benefit Account [Dkt. 790]
 - i. Certain Members of the Official Committee of Unsecured Creditors Response [Dkt. 830]
 - ii. Official Committee of Unsecured Creditors Limited Objections [Dkt. 833]
 - iii. Trustee's Limited Objections [Dkt. 834]
 - iv. Plaintiffs Dale and Allison Devilli Opposition [Dkt. 836]
 - v. Interested Plaintiffs' Counsel Response [Dkt. 839]
 - vi. Official Committee of Unsecured Creditors and Trustee Sur-Reply [Dkt. 914]
 - vii. Certain Members of the Official Committee of Unsecured Creditors Sur-Reply [Dkt. 915]
 - viii. PSC Sur-Sur-Reply [Dkt. 1008]
 - ix. Trustee and Official Committee of Unsecured Creditors Reply to PSC Sur-Sur-Reply [Dkt. 1030]
 - x. Trustee and Official Committee of Unsecured Creditors Reply to PSC Sur-Reply [Dkt. 1095] (Leave to file granted 4/10/14)
 - b. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534]
 - i. Argued at the April 10, 2014 status conference

- ii. Ameridose's Reply to Tennessee Clinic Defendants' Joinder in the PSC's Discovery Lift [Dkt. 1130]
- c. Motions for extension of time / briefing schedules
 - i. Joint Unifirst and PSC Motion for Order to Set Briefing Schedule [Dkt. 1166]
 - ii. Joint PSC and Cincinnati Pain Motion for Revised Motion to Dismiss Schedule [Dkt. 1145] (granted Dkt. 1167)
 - iii. Joint Motion to Continue Hearing on BKC's Motion to Dismiss to August [Dkt. 1190] (granted Dkt. 1191)
 - iv. Joint APAC and PSC Amended motion for order to Set Briefing Schedule [Dkt. 1088]
- 9. Motions already heard (oral argument held on June 18)
 - a. Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, Motion to Dismiss (Global Claims) [Dkt. 831]
 - i. PSC Response [Dkt. 980]
 - ii. Premier Reply [Dkt. 1031]
 - iii. PSC Sur Reply [Dkt. 1097] (Leave to file Granted 4/10/14)
 - b. Tennessee Clinic Defendants' Motion to Dismiss (Global Claims) [Dkt. 771, 772] and St. Thomas Entities' Motion to Dismiss (Global Claims) [Dkt. 893, 894] and Ascension Parties' Motion to Dismiss (Global Claims) [Dkt. 895, 896]
 - i. PSC Opposition [Dkt. 1040, 1042, 1043]
 - ii. St. Thomas Reply to Response (Global Claims) [Dkt. 1110]
 - iii. Ascension Reply to Response (Global Claims) [Dkt. 1111]
 - iv. TN Clinic Defendants Reply to Response (Global Claims) [Dkt. 1112]
 - c. Tennessee Clinic Defendants' Motion to Dismiss (Failure to Comply with Tenn. Code. Ann. 29-26-121) [Dkt. 770, 898, 899, 924, 925] and St. Thomas Entities' and Ascension Parties' Motion to Dismiss (Failure to Comply with Tenn. Health Care Liability Act) [Dkt. 779, 780]
 - i. PSC Opposition [Dkt. 1115, 1116]
 - ii. St. Thomas Reply to Response (Failure to Comply with Tenn. Health Care Liability Act) [Dkt. 1179]

- iii. TN Clinic Defendants Reply to Response (Failure to Comply with Tenn. Code Ann. 29-26-121) [Dkt. 1180]
- d. PSC Rule 56 (d) Response to Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 948] to Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 774, 775, 776, 777, 778] (argued at April Status Conference)
 - 1. Tennessee Clinic Defendants' Reply to Motion for Summary Judgment [Dkt. 1015]
 - 2. PSC's Surreply to Tennessee Clinic Defendants' Reply to the PSC's Rule 56(d) Response to the Tennessee Clinic Defendants' Motion for Summary Judgment re Compliance with Tenn. Code Ann. § 29-26-122 [Dkt. 1061]
 - 3. Tennessee Clinic Defendants' Response [Dkt.1070]
- 10. Motions and other matters to be heard (oral argument requested)
 - a. Motion to Withdraw as Counsel for Norma King [*King v. New England Compounding Pharmacy*, 14-cv-10434, Dkt. 14]
 - i. Motion for Leave to Appear via Telephone [MDL Dkt. 1101]
 - ii. Opposition by Attorney Barbara Buell [14-cv-10434, Dkt. 15]
 - b. Insight's Request for Supplemental Order to Effectuate Transfer [Dkt. 1193] (follow up to Memorandum of Decision [Dkt. 1131] directing "counsel shall inform the court regarding any steps necessary to effectuate the transfer of cases pursuant to this opinion")
 - iii. Joint Joinder by Trustee and Official Committee of Unsecured Creditors [Dkt. 1198, 1198-1]
 - b. Insight Health Corp.'s Emergency Motion for Entry of an Order in Aid of Court's Memorandum and Decision Transferring Additional Personal Injury and Wrongful Death cases Dated May 15, 2014 [Dkt. 1149] (oral argument heard June 3, 2014)
- 11. Motions referred to Judge Boal
 - a. Motion to Stay Discovery by Saint Thomas Health, Saint Thomas Network, Saint Thomas West Hospital [Dkt. 595, 596]

- i. Motion for Joinder in Saint Thomas's Motion for Protective Order and Saint Thomas's Motion to Stay Discovery, and Motion for entry of discovery plan [Dkt. 598] (joinder granted)
 - ii. PSC's Response to Motion re Motion for Joinder in Saint Thomas's Response to Motion for Reconsideration Motion for Case Management Orders, Motion for Protective Order (Second Amended), Motion to Stay Discovery [Dkt. 617]
 - iii. Saint Thomas Entities' Notice of Status of Meet and Confer [Dkt. 863]
 - iv. Hearing scheduled for July 17 [Dkt. 1127]
- b. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838]
 - i. Argued at the April 10, 2014 status conference
- c. Motion for Entry of Deposition Protocol Order [Dkt. 996, 998, 1009, 1054]
 - i. Fully argued at April 10, 2014 hearing [Dkt. 1081]

C. Briefing in progress.

- 12. Master Complaint against Affiliated Defendants and responsive pleadings [May 13, 2014 Status Conference Transcript, p. 47]
 - a. September 2, 2014, deadline to file Master Complaint against Affiliated Defendants [Dkt. 881(5)]
 - b. Moot if settlement approved.
- 13. Saint Thomas Entities' Motion to Modify Case Management Order No. 6 [Dkt. 1075, 1076]
- 14. PSC's Motion for Entry of Case Management Order Regarding Virginia Matters [Dkt. 1188] (oral argument requested)
- 15. Dispositive Motions:
 - a. Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 774, 775, 776, 777, 778] (further argument and briefing necessary if Court denies PSC's Rule 56(d) Response, Dkt. 948)
 - b. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
 - c. BKC Motion to Dismiss [Dkt. 896, 897]
 - i. PSC Opposition [Dkt. 1062]
 - d. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]

- e. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]
- f. Dallas Back Pain Management/Momentum Pain Management and Abbeselom Ghermany's Motion to Dismiss [Dkt. 1133]
 - i. Henley Opposition [Dkt. 1124]
- g. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Ramos*) [Dkt. 1039] (oral argument requested by Dr. Bhagat)
 - i. PSC Opposition [Dkt. 1091]
 - ii. Dr. Bhagat Reply [Dkt. 1182-1183]
- h. Dr. Nitesh Bhagat's Motion to Dismiss (*Pennington*) [*Pennington* Dkt. 59]
 - i. Opposition [*Pennington* Dkt. 60]
- i. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Rivera*) [MDL Dkt. 1194]

Dated: June 17, 2014

Respectfully submitted,

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Ameridose's Liaison Counsel

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the June 19, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: June 17, 2014

/s/ Kristen A. Johnson

Kristen A. Johnson, BBO # 667261